

The Responses

Jenks

Jenks states that he has known Smith for most of his adult life and has consulted Smith on several occasions about possible opportunities in the broadcasting business. Contrary to Design's allegations, Jenks maintains that he sought Smith's advice about the possibility of pursuing the allotment of a new FM channel in Bowdon and that Smith never asked, suggested, recommended, or otherwise urged him to file his counterproposal for any illegitimate purpose or to benefit anyone other than himself. Jenks also states that he does not know, has never met, and has never even spoken with Tarkenton or any of his sons.

Jenks declares that he filed his counterproposal solely out of a desire to apply for a new FM station at Bowdon. On October 31, 1991, Jenks in fact was among four applicants who filed FCC Forms 301 for a construction permit for a new FM station to serve Bowdon, Georgia.

Smith

Smith essentially corroborates Jenks' statements. Smith maintains that Jenks discussed his interest in owning a radio station before Design ever filed its petition for an upgrade of WQUL(FM)'s facilities. Smith declares that he had no knowledge of Design's plan to upgrade WQUL(FM) until after Jenks decided to pursue the concept of seeking an allotment at Bowdon. Moreover, Smith flatly denies that Tarkenton ever communicated any suggestion to him that a counterproposal should be filed for any purpose.

Tarkenton

Tarkenton states that he has never spoken to Jenks and has never directed anyone else to do so on his behalf. Tarkenton also asserts that he has no knowledge of any matter concerning Jenks' counterproposal. Tarkenton further contends that the only joint media relationship that he ever had with Smith existed from

Based on the facts presented, we are unable at this time to find the existence of any "crucial link" between Jenks and Tarkenton. Jenks declares that he filed his counterproposal solely out of a long-standing interest in applying for and operating his own radio station. Jenks' subsequent submission of an application for the Bowdon allotment could be construed to represent an affirmative demonstration of the veracity of his expression of interest. Jenks further states that he does not know, has never met, and has never spoken with Tarkenton and that

4. Identify the nature and extent of all interests held by Dallas Tarkenton III at the present time in any broadcast station.

5. Identify the nature and extent, if any, of Dallas M. Tarkenton's involvement in the preparation, prosecution, and disposition of Stephen Tarkenton's application for a construction permit for a new FM station at Lafayette, Florida (File No. BPH-870720MU).

6. State whether Dallas M. Tarkenton signed the application of Stephen Tarkenton for a construction permit for a new FM station at Lafayette, Florida (File No. BPH-870720MU), and describe the circumstances of such action.

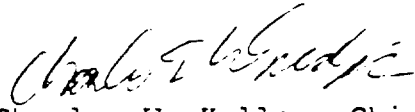
7. State whether Dallas M. Tarkenton signed any documents filed with the Commission by Stephen Tarkenton in connection with Stephen Tarkenton's application for a construction permit for a new FM station at Lafayette, Florida (File No. BPH-870720MU), and describe the circumstances of such action(s).

8. Identify the nature and extent, if any, since January 1989, of Dallas M. Tarkenton's involvement, either directly or indirectly, in the operation of Stations WMKJ(FM) and/or WCOH(AM), Newnan, Georgia.

Pursuant to § 73.1015 of the Commission's Rules, Dallas M. Tarkenton is requested to respond to the above within twenty (20) calendar days of the date of this letter. Each answer shall be numbered to identify the specific request to which it is intended to respond. Each part of every question shall be answered. Additional information which you feel may be useful in helping the Commission to make a determination in this matter may be provided. The failure to respond fully to any request will constitute a violation of Section 73.1015 of the Commission's Rules, and may subject the respondent to serious sanctions under that rule section. Commission policy requires that responses to its inquiries be signed by the respondent.

Dallas M. Tarkenton is requested to direct his response to:
Gary P. Schonman, Esq., Federal Communications Commission, Mass
Media Bureau, 2025 M Street, N.W., Suite 7212, Washington, D.C.
20554.

Sincerely,

for 
Charles W. Kelley, Chief
Enforcement Division
Mass Media Bureau

cc: (By First Class U.S. Mail)

David Tillotson
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
Counsel for Design Media, Inc.

Patricia A. Mahoney, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036
Counsel for Terry C. Jenks

Edward S. O'Neill
Bryan, Cave, McPheeters & McRoberts
700 13th Street, N.W., Suite 700
Washington, D.C. 20005-3960
Counsel for Gleamer Lee Smith

ATTACHMENT 2

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

November 17, 1992

IN REPLY REFER TO:

1800C4

Certified Mail -- Return Receipt Requested

John S. Neely, Esq.
Miller & Miller
1990 M Street, N.W., Suite 760
Washington, D.C. 20036

Dear Mr. Neely:

amendments must be executed by the applicant or its authorized principal."

5. Describe fully all facts and circumstances involving your role (contemplated and actual) with respect to the attached letter, dated February 20, 1991, from Dallas M. Tarkenton to Bob Thorburn.

Pursuant to § 73.1015 of the Commission's Rules, Dallas M. Tarkenton is requested to respond to the above within 30 calendar days of the date of this letter. Each answer shall be numbered to identify the specific request to which it is intended to respond.

Additional information which you feel may be useful in helping the Commission to make a determination in this matter may be provided. Such additional information may include, at your

ATTACHMENT 3

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

IN REPLY REFER TO:

1800C4

February 10, 1993

Certified Mail - Return Receipt Requested


John S. Neely, Esq.
Miller & Miller
1990 M Street, N.W., Suite 760
Washington, D.C. 20036

Dear Mr. Neely:

The Commission is in receipt of your responses to official letters of inquiry, submitted February 18, 1992, and December 17, 1992, on behalf of Dallas M. Tarkenton. The letters of inquiry were precipitated by concerns that Mr. Tarkenton abused the Commission's processes, was or is an undisclosed real party-in-interest in applications for broadcast facilities filed by or on behalf of one or more of his sons, or otherwise engaged in Commission-related misconduct.

Based on the information currently before the Commission, we find there is no warrant at this time for further action. Accordingly, this matter is hereby closed.

Sincerely,

for 

Charles W. Kelley
Chief, Enforcement Division
Mass Media Bureau

cc: David Tillotson, Esq.
3421 M Street, N.W.
Suite 1739
Washington, D.C. 20007

ATTACHMENT 4

DUPLICATE
FILE

PEPPER & CORAZZINI

ATTORNEYS AT LAW

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OF COUNSEL

FREDERICK W. FORD

1909-1988

TELECOPIER: (202) 296-5572

RECEIVED

SEP 19 1991

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)	MM Docket No. 90-309
)	
Amendment of Section 73.202(b),)	RM-7097
Table of Allotments,)	RM-7310
FM Broadcast Stations)	
(Griffin, Hogansville, and)	
Sparta, Georgia))	

To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Alexander Mitchell Communications Corporation

["WSKS(FM)"] licensee of WSKS(FM), Sparta, Georgia, by its

Though Bowdon dismissed its request, Terry C. Jenks filed an expression of interest, thus Bowdon's proposal was considered in this proceeding. Since Channel 288A cannot be allotted to both Hogansville and Bowdon in compliance with the Commission's minimum distance separation requirements, adoption of Bowdon's proposal will preclude adoption of Design's and WSKS(FM)'s interdependent proposals.

3. In its Report & Order, the Bureau adopted the Bowdon counterproposal and allotted Channel 288A to Bowdon, while rejecting WSKS(FM)'s and Design's proposals. WSKS(FM) seeks reconsideration of that decision.

II. ADOPTION OF THE WSKS(FM) AND DESIGN PROPOSALS BETTER SERVES THE PUBLIC INTEREST

4. An upgrade by both WSKS(FM) and Design's WQUL(FM) and the provision of wide area service by both stations, will create a new competitive environment in the central Georgia area. This should be preferred over the proposal to provide a first local service to the much smaller community of Bowdon. See Bartow, Georgia, et al, 4 FCC Rcd 6876, 6878 (MMB 1989) ("provision of a competitive service to a larger community may overcome the presumptive need for a first local service to a smaller community, especially if the public service benefit arising from the allotment of a channel to a smaller community is limited to the provi-

stitutes the provision of a competitive service within the meaning of Bartow. Not only will large gains in service result from adoption of WSKS(FM)'s and Design Media's interrelated proposals -- gains that cannot be equalled by adoption of the Bowdon counterproposal^{2/} -- adoption of the proposal will result in the provision of a second aural service by WSKS(FM). Bowdon, on the other hand, appears to be limited to the "provision of first local service to an extremely small population."

6. In light of the Commission's recognition that the entire country receives at least one radio service and the Commission's decision in Bartow, the provision of a second aural service must take precedence over the provision of first local service where the provision of that first local service will not also result in the provision of a second aural service. No showing has been made that the Bowdon counterproposal will also result in the provision of a second aural service. Accordingly, the interrelated WSKS(FM) and Design Media proposals should be preferred.

III. CHANNEL 223A MAY BE ALLOTTED TO BOWDON CONSISTENT WITH THE COMMISSION'S RULES

7. In its Reply Comments to the Counterproposals, WSKS(FM) urged that Channel 223A be allotted to Bowdon as a 3 kilowatt facility as a way of accommodating all proposals. WSKS(FM) demonstrated that the allotment could be made consistent with Section 73.213(c)(1) of the Commission's Rules. Reply Comments

^{2/} See Exhibit 1 to WSKS(FM)'s Reply Comments.

at ¶9. See also Exhibit 1 thereto at p. 2-3. WSKS(FM) demonstrated that the spacing requirements set forth in Section 73.213(c)(1) could be utilized because the new allotment will be made by an order granting a petition to amend the FM Table of Allotments filed prior to October 2, 1989, i.e., Design Media, Inc.'s inceptive proposal filed on September 28, 1989. See Section 73.213(c) of the Commission's Rules.

8. The Bureau dismissed this potential resolution, citing nothing more than its disagreement with the proposition that Section 73.213(c) could be utilized.^{3/} Nothing in the Commission's Second Report & Order, supra, prevents a grant of WSKS(FM)'s proposal to allot Channel 223A as a 3 kilowatt facility to Bowdon. If the Commission were to adopt the Channel 223A proposal along with WSKS(FM)'s and Design's proposals, it would be making the allotment pursuant to a petition for rule making filed prior to October 2, 1989. The allotment would therefore be made in full compliance with the Commission's Rules.

9. In fact, as set forth in WSKS(FM)'s Reply Comments, the 223A 3 kilowatt allotment is a better allotment than the Channel 288A allotment. See Reply Comments at ¶11. Adoption of this proposal will therefore serve the needs and interests of all parties, including the public interest.

^{3/} The Bureau did refer to the Commission's Second Report and Order in MM Docket No. 88-275, 4 FCC Rcd 6375 (1989). The Bureau did not, however, refer to any particular page or section of that decision which addressed the issue of the applicability of Section 73.213(c) in these circumstances, and indeed, counsel for WSKS(FM) has been unable to find such a discussion.

CONCLUSION

Wherefore, the premises considered, the counterproposal of Bowdon Broadcasters should be rejected and the proposal contained in the Commission's Notice of Proposed Rule Making, DA 90-832, released June 22, 1990, as well the Channel 223A alternate at Bowdon, should be adopted.

Respectfully Submitted,

ALEXANDER MITCHELL
COMMUNICATIONS CORPORATION

By: 

John F. Garziglia
Howard J. Barr

Pepper & Corazzini
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20554
(202) 296-0600

September 19, 1991

CERTIFICATE OF SERVICE

I Claudia Roberts, do hereby certify that a true and correct copy of the foregoing Petition for Reconsideration has been served upon the following individuals by U.S. mail, postage prepaid, on this 19th day of September, 1991.

*Andrew J. Rhodes
Acting Chief, Allocations Branch
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

*Ms. Nancy J. Walls
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8317
Washington, D.C. 20554

Alan Aronowitz, Esquire
Baraff, Koerner, Olender
& Hochberg, P.C.
2033 M Street, N.W., Suite 700
Washington, D.C. 20036
(Counsel for Design Media, Inc.)

Terry C. Jenks
12017 Running Creek Road
Louisville, KY 40243

Daniel F. Vann Horn, Esq.
Arent, Fox, Kintner, Plotkin & Kahn
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Washington, D.C. 20036
(Counsel for Bowdon Broadcasters)

Robert G. Scott, Jr., Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(Counsel for Info-Air, Inc.)

*Hand Delivery


Claudia Roberts

ATTACHMENT 5

ATTACHMENT 5

DEFINITIONS AND INSTRUCTIONS FOR DOCUMENT PRODUCTION BY STEVEN L. GRADICK

1. The term "document" means but is not limited to the original, and any copy of the original that differs from it because of notes written on or attached to such copy or otherwise, or any identical copy of the original if the original is not available, as well as any drafts of the original, or any portion thereof, or any written, preprinted, typed, or visually or aurally recorded material of any kind, and includes, but is not limited to, any and all writings, correspondence, memoranda, minutes, agendas, notices, diaries, notes, records, contracts, reports, statements, papers, graphic or pictorial material. Such documents shall include, but not be limited to, all documents in the Applicant's possession, or in the possession of or available to any of the Applicant's representatives or agents.

2. This request is continuing in nature, so as to require supplemental responses within twenty (20) days after obtaining or discovering additional documents, or not later than the commencement of hearing, whichever date is sooner, or upon order shortening or enlarging these periods issued by the Presiding Officer, if further or different documents are discovered or obtained prior to or during the hearing in this proceeding.

3. The term "representative" includes employees, agents, consultants, counsel, trustees, and anyone acting for or on behalf of the Applicant, whether past, present or proposed.

4. The term "FCC" means the Federal Communications Commission, Washington, D.C.

5. The term "person" includes natural persons, corporations, partnerships, associations, and other legal entities; and governments or governmental bodies, commissions, boards, agencies or entities.

6. The term "relate to" means, in addition to its ordinary meaning, initiate, comprise, underly, memorialize, refer to, and explain.

7. For each document produced, identify the request to which it is deemed to be responsive. For documents considered responsive to more than one request, it is sufficient to identify the requests to which it is considered primarily responsive.

8. If any privilege is claimed with respect to any document requested herein, an index of all such documents should be furnished and should include the name of the author, to whom the document was sent, a list of all persons to whom the document was copied or circulated, a brief description of its contents, the date of the document, and the basis for which the privilege is claimed.


9. If any document requested to be produced is no longer in the possession or control of Steven L. Gradick or his agents or representatives or is no longer in existence, identify such document fully and state whether it is: (1) missing or lost; (2) destroyed; (3) transferred voluntarily or involuntarily to others, and if so, to whom; (4) otherwise disposed of, and, in each instance explain the circumstances surrounding and authorization for such disposition and state the approximate date thereof.

CERTIFICATE OF SERVICE

I, Diane L. Roper, a secretary at the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Motion to Enlarge Issues" were sent this 9th day of April, 1993, by first-class United States mail, postage prepaid, to the following:

- * The Honorable Richard L. Sippel
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554
- * James Shook, Esquire
Mass Media Bureau
2025 M Street, N.W., Room 7212
Washington, D.C. 20554
Counsel for the Mass Media Bureau

Audrey P. Rasmussen, Esquire
O'Connor & Hannan
1919 Pennsylvania Ave., N.W., #800
Washington, D.C. 20006
Counsel for Steven L. Gradick



Diane L. Roper

*By Hand Delivery